

Supreme Court, U.S.
FILED

JAN 2 1984

ALEXANDER L. STEVAS
CLERK

83 - 1371
No.

IN THE

**SUPREME COURT OF
THE UNITED STATES**

OCTOBER TERM, 1983-1984

PAUL F. PERATIAppellant

VS.

FRED CUTTERAppellee

**ON APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR**

JURISDICTIONAL STATEMENT

PAUL F. PERATI
6110 Aspinwall Rd.
Oakland, California 94611
415-339-2817
In Propria Persona

THE SPECIFIC ISSUES RAISED BY THIS APPEAL ARE
(Questions presented):

1. Whether a State Constitutional (privacy) Provision, is considered a *statute*, as mandated by this Court's prior opinions, and thus subject to California's three year statute of limitations?

2. Whether an appeal court ruling, that: "the trespass to land and conspiracy to commit trespass to land (by an imposter, into a family home) (probably some type of law officer), if *misleading*, was nevertheless consensual and thus not wrongful, is a violation of due process, when there is no factual support in the record?

3. Whether an appeal court ruling, that: "the action for fraud & deceit did not allege facts showing justifiable reliance", (when facts were alleged) was error? This being a question to be determined by a trier of fact (after threshold allegations have been made), not a question of law.

TABLE OF CONTENTS

SUBJECT INDEX

	<u>Page</u>
QUESTIONS PRESENTED, RULE 15 a	i
SUBJECT INDEX, RULE 15 c	ii
AUTHORITIES CITED, RULE 15 c	iii
REFERENCE TO JUDGMENTS, RULE 15 d	1
JURISDICTIONAL AUTHORITY, RULE 15 e	2
STATUTES INVOLVED, RULE 15 f	3
STATEMENT OF THE CASE, RULE 15 g	4
IMPORTANCE, RULE 15 h	7
APPENDIX	A1
EXHIBIT A, SUPERIOR COURT JUDGMENT	A1
EXHIBIT B, court of appeal judgment	B1
EXHIBIT C, REHEARING DENIAL	C1
EXHIBIT D, STATE SUPREME COURT DENIES PETITION FOR HEARING	D1
EXHIBIT E, AMENDED NOTICE OF APPEAL AND PROOF OF SERVICE	E1

Rule 15 c AUTHORITIES CITED

<u>CONSTITUTION</u>	<u>PAGE</u>
U.S. CONSTITUTION, 14th AMEND	3, 7, 8
CALIF. CONSTITUTION, Art. I, sec. 1.	3, 4, 5, 7
<u>STATUTES</u>	
28 UNITED STATES CODE 1257 (2)	2, 4
DEERINGS CALIF. EVIDENCE CODE ANNOTATED sec. 230 & pocket supp.	3
CALIF. CODE CIV. PROCEDURE, sec. 340 (3)	2, 3, 6
CALIF. CODE CIV. PROCEDURE, sec. 338 (1) ...	2, 3, 4, 5, 7
<u>CASES</u>	
DIETEMANN vs. TIMES INC., 284 F. SUPP. 925 & 449 FED 2d 245	5
HAMILTON vs. REGENTS, 293 U.S. 254, 258	2, 5, 8
HUFFMAN vs. PURSUE, LTD. 420 U.S. 502	2
ORR vs. ORR, 440 U.S. 268, 276-277	2
PRUNEYARD SHOPPING CENTER vs. ROBINS, 447 U.S. 74, 79.	2

JURISDICTIONAL STATEMENT

Rule 15 a.

THE SPECIFIC ISSUES RAISED BY THIS APPEAL ARE:

1. Whether a State Constitutional (privacy) Provision, is considered a *statute*, as mandated by this Court's prior opinions, and thus subject to California's three year statute of limitations?

2. Whether an appeal court ruling, that: "the trespass to land and conspiracy to commit trespass to land (by an impositor, into a family home) (probably some type of law officer), if *misleading*, was nevertheless consensual and thus not wrongful, is a violation of due process, when there is no factual support in the record?

3. Whether an appeal court ruling, that: "the action for fraud and deceit did not allege facts showing justifiable reliance," (when facts were alleged) was error? This being a question to be determined by a trier of fact (after threshold allegations have been made), not a question of law.

JURISDICTION & OPINIONS BELOW

Rule 15 d.

The Law and Motion Department of the Superior Court in and for the County of Alameda, State of California, sustained the demurrer to appellant's First Amended Complaint for damages in general terms without leave to amend (Appendix Exhibit A).

The Court of Appeal of the State of California, First Appellate District, Div. Four, sustained the demurrer of the Law and Motion Dept. below (Appendix Exhibit B), July 7, 1983.

Petition for Rehearing Denied, (Appendix Exhibit C), August 4, 1983.

The California State Supreme Court denied Appellant's petition for Hearing (Appendix Exhibit D), October 5, 1983.

Rule 15 e.

This case is properly on appeal under 28 USC 1257 (2), it having long been established that a state constitutional provision is a "statute." The District Court of Appeal of the State of California, First Appellate District, Div. Four, in its interpretation, sustained the Privacy provision of Art. I, sec 1, of the Calif. State Constitution, as being within Cal. Code Civ. Pre., sec 340, c (an action for injure of one caused by the wrongful act or neglect of another, 1 yr. limit), not a liability created by statute.

Properly, under rulings of this Court, State Constitutional provisions are "STATUTES", thus within Cal. Code Civ. Procedure, sec 338 (1)—a liability created by statute, other than a penalty or forfeiture, a three year limit, thus this action was filed in time.

The Petition for Rehearing in the D.C.A. was denied and filed August 4th, 1983.

The Supreme Court of the State of California, on Oct. 5th, 1983, denied this Appellant's Petition for Hearing.

A Notice of Appeal was filed in the Court of Appeal, State of California, First Appellate District, Div. Four, Oct. 26, 1983.

An amended Notice of Appeal has been filed in the Court of Appeal, State of California, First Appellate District, Div. Four, see appendix.

iii Jurisdiction to hear this appeal, is within *Hamilton vs. Regents*, 293 U.S. 245, 258 and *Pruneyard Shopping Center vs. Robins*, 447 U.S. 74, 79.

In accord: *Huffman vs. Pursue Ltd.*, (1975) 420 U.S. 502; 421 U.S. 971. *Orr vs. Orr*, 440 U.S. 268, 276-277.

STATUTES INVOLVED

Rule 15 f.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amendment Fourteen.

All people are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety, happiness and *privacy*.

Calif. Const. Art. I, sec. 1, 1972.

Statute includes a treaty and a constitutional provision. Deerings Calif. Evidence Code annotated, sec. 230 & latest pocket supplement. Law Revision Commission Comment: In the Evidence code "statute" includes a constitutional provision.

One Year Limit—Penalty, Forfeiture to Individual, State, Torts.

Within one year:

3(c). An action for libel, slander, assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, balance not relevant. Cal. Code Civil Procedure, sec. 340 (3).

Three Year Limit—*Statutory Liability*, Trespass, Recovery of Personality, Fraud, Official Bonds.

Within three years:

1. *An action upon a liability created by statute, other than a penalty or forfeiture.*

Calif. Code Civil procedure, sec. 338 (1).

By appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or *laws of the United States*, and the decision is in favor of its validity. 28 U.S.C. 1257 (2).

The law of the United States provides that a state constitutional provision is a statute, being legislative in nature. The holding below does not consider Calif. Const. Art. I, sec. 1, to be a statute.

STATEMENT OF THE CASE

Rule 15 g.

The complaint contained four counts.

1. Trespass to appellant's real property and residence. 2. An invasion of privacy count. 3. A conspiracy count. 4. A fraud and deceit count.

The complaint was filed within the allowable three year period provided by Cal. Code Civ. Pro. sec. 338 (1); liability created by statute (no limitation problem in other than privacy count).

That John Doe I (probably some type of law officer) did by stealth, impersonate the late Foresta Jim Johnson, and joined appellant's family Thanksgiving dinner.

That appellee Fred Cutter, knowing of John Does contemplated tortious conduct, acting in concert, with a unity of purpose, gave assistance to John Doe, by driving appellant's 13 year old son 16 miles down to Yosemite Valley, returning him after dark, and after John Doe had left appellant's Foresta Mariposa County residence.

That appellee knew that appellant and his thirteen year old son, who were living in Oakland, were looking forward to a festive family Thanksgiving dinner with the son's mother, who was staying at their Foresta residence, two hundred miles away for reasons of health.

That appellee knew that by keeping appellant's son away from the Thanksgiving dinner table, John Doe would not be exposed as the impostor of Foresta Jim Johnson.

Appellee demurred generally and specially—that the complaint did not state facts sufficient to constitute a cause of action, that the action was barred by the statute of limitations and that the court had no jurisdiction of the cause of action.

Appellant pointed out in his pleading that under *Hamilton vs. Regents*, 293 U.S. 254, 258—The definition of "statute" applies to constitutional provisions.

The Law & Motion Dept. of the Superior Court in & for the County of Alameda, State of California, sustained appellee's demurrer in general terms.

Appellant's Opening Brief in the Court of Appeal of the State of California, First Appellate District, Div. Four, pointed out that: Under *Dietemann vs. Times, Inc.*, 284 F. Supp. 925, 449 Fed. 2d 245, it was held that "Under Calif. law, a cause of action for invasion of privacy was established on proof that defendant's employee's by subterfuge gained entrance to the office portion of plaintiff's home."

That Cal. Const., Art. I, sec. 1, 1972, provides that "All people have an inalienable right to obtain safety, happiness and *privacy*."

That the Calif. Code of Civil Procedure, sec. 338 (1) (statute of limitations) provides, "Within three years: 1: An action upon a liability created by statute, other than a penalty or forfeiture."

That *Hamilton vs. Regents*, 293 U.S. 245, 258, held that "statute" applies to a constitutional provision.

The Court of Appeal in its ruling, held: The allegations of the first and third causes of action, for trespass to land and conspiracy to commit trespass to land, demonstrate that the entry complained of, if misleading, was nevertheless consensual and thus not wrongful.

The second cause of action for tortious *invasion of privacy*, was asserted more than *one year* after the alleged invasion occurred, and thus was barred by the applicable statute of limitations. Code Civ. Pro. sec. 340, sub. (c).

The fourth cause of action for fraud & deceit, did not allege facts showing justifiable reliance by appellant on misrepresentation by the alleged intruder.

The judgment of dismissal (in the superior court) is affirmed.

Appellant's Petition for Rehearing, filed in the Court of Appeal, pointed out, that:

1. The record contains no allegation expressed or implied, that appellant consented to the trespass. Thus, a factual hearing is required for respondent to carry his burden of justifying the entry. If it is not in the record, it just is not there.

2. This court has not correctly considered that the definition of "statute" has been properly construed by statute and higher authority. Thus, in privacy actions the applicable statute of limitations should be three years.

3. Appellant's third cause of action for conspiracy to invade his right to privacy and invade his residence, clearly alleged the ultimate required pleading allegations—two or more persons agreeing to perform a wrongful act and damage.

4. Justifiable reliance in a fraud and deceit count is a question of fact, not law, once a threshold allegation has been made that is not clearly illogical. Particularly when as here, appellee did not raise the issue in his reply brief.

Petition for Rehearing Denied.

Appellant's Petition for Hearing filed in the Supreme Court of the State of California, pointed out, that:

1. The D.C.A. opinion overlooked "the burden of establishing the possessor's consent is upon the person who relies on it, and assent of the possessor of land fraudulently obtained or acted upon by the actor, is not a consent to entry thereon."

2. Petitioner had alleged sufficient facts showing violations of his right of privacy under state and federal constitutions.

3. Privacy actions are within the three year limitation of Cal. Code Civ. Procedure sec. 338, sec. 1.

4. Petitioner's third cause of action for conspiracy to invade his right to privacy and invade his residence, clearly alleged the ultimate required pleading allegations—two or more persons agreeing to perform a wrongful act and damage.

5. Justifiable reliance in a fraud count is a question of fact, not law, once a threshold allegation has been made.

Hearing Denied, Oct. 5th, 1983.

THE QUESTION PRESENTED IS SUBSTANTIAL

Rule 15 h.

Article I, sec. 1, of the California State Constitution, provides for a statutory protected right of Privacy for all of its people.

This Court's decision will have a direct and immediate effect of allowing persons deprived of their Constitutional Right of Privacy, the right to institute actions within the statutory three year period, allowed other litigant's who action upon any other liability created by statute. This right to action within a three year period, for liabilities created by statute, has been the California rule for many decades.

The effect of the decision of the Calif. Court of Appeal, in sustaining a one year limitation period for Calif. Constitutional Privacy actions, voids and is repugnant to the Equal Protection Clause of the Fourteenth Amendment.

It has long been held by this Court (in the absence of an independent state ground), that where a state court has before it a federal question (here, a question of construction—whether a constitutional provision is a statute?) and decides that question adversely to the right asserted (expressly or impliedly) this Court has jurisdiction to review the judgment, and an appeal lies as a matter of right.

It has long been established (Hamilton vs. Regents, 293 U.S. 245, 258 through Pruneyard Shopping Center vs. Robins, 447 U.S. 74, 79) that a state constitutional provision is a "statute."

The Court of Appeal's holding; "the allegations in the cause of action for trespass to land (residence) and conspiracy, demonstrate that the entry complained of, if misleading, was consensual, thus not wrongful," has no support in the record.

Appellant has alleged an unauthorized entry into a home, the essence of a cause of action for trespass. Not to consider an unauthorized entry tortious conduct, is a clear violation of Fourteenth Amendment Due Process, striking at the very heart of American jurisprudence; the protection of life, liberty and property.

Dated: December 29th, 1983.

Respectfully,

PAUL F. PERATI
In Propria Persona

APPENDIX

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA.

PAUL F. PERATI

Plaintiff,

v.

ACTION #488,795-9

JOHN DOE ONE, JOHN DOES
TWO THROUGH TWELVE and

FRED CUTTER,

Defendants

JUDGMENT

On March 31, 1980, at 2 p.m., in Department 19, in the above-entitled Court, Judge Donald P. McCullum presiding, the demurrer of defendant Fred Cutter to plaintiff's First Amended Complaint came on regularly for hearing. After being fully advised in the premises, the demurrer of defendant Fred Cutter to plaintiff's First Amended Complaint is sustained without leave to amend. NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the complaint against defendant Fred Cutter be and hereby is dismissed.

Dated: March 31, 1980. s Hon. Donald P. McCullum

Copy in appendix of J. Statement has signature.

NOT PUBLISHED

EXHIBIT B

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR**

FILED July 7, 1983

PAUL F. PERATI,

Plaintiff & Appellant

v.

FRED CUTTER

Defendant & Respondent.

1 Civ. #50151

A011848

Sup. Ct. No. 488795-9

Alameda County

THE COURT:*

Paul Perati appeals from a judgment dismissing his complaint against Fred Cutter and twelve Doe defendants after the court sustained Cutter's demurrer to appellant's first amended complaint without leave to amend.

The court did not err in sustaining the demurrer. The allegations of the first and third causes of action, for trespass to land and conspiracy to commit trespass to land, demonstrate that the entry complained of, if misleading, was nevertheless consensual and thus was not wrongful. (4 Witkin Summary of Cal. Law (8th ed. 1974) Torts, sec. 161, p. 2451.) The second cause of action, for tortious invasion of privacy, was asserted more than one year after the alleged invasion occurred and thus was barred by the applicable statute of limitations. (Code Civ. Pro., sec. 340, subd. (c).) The fourth cause of action, for fraud and deceit, did not allege facts showing justifiable reliance by appellant on misrepresentations by the alleged intruder. (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, sec. 446, p. 2711.

The judgment of dismissal is affirmed.

* Before Caldecott, P.J., Rattigan, J. and Christian, J.

EXHIBIT C

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
Division Four**

PAUL F. PERATI,
Plaintiff and Appellant,
vs.
FRED CUTTER,
Defendant and Respondent.

**1/Civ. 50151
No. A011848**

**Alameda
Superior
Court #488795-9**

BY THE COURT:

The petition for rehearing is denied.

Dated August 4, 1983

CALDECOTT, P.J.

Copy in appendix of J. Statement has signature.

D-1

EXHIBIT D

**ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL**

1st Distr., Div. 4, Civil #50151, A011848

Filed Oct. 5, 1983

**IN THE
SUPREME COURT OF
THE STATE OF CALIFORNIA
IN BANK**

PERATI

VS.

CUTTER

Appellant's petition for hearing DENIED.

/S/

Bird

Chief Justice

Copy in appendix of J. Statement has signature.

EXHIBIT E

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR**

PAUL F. PERATI,
Plaintiff & Appellant,
vs.

1 Civ. #50151

FRED CUTTER,
Defendant & Respondent.

**AMENDED NOTICE OF APPEAL TO THE CLERK OF
THE ABOVE-ENTITLED COURT:**

PLEASE TAKE NOTICE that plaintiff and appellant, Paul F. Perati, appeals to The UNITED STATES SUPREME COURT, October Term, 1983-1984, from the whole of the judgment filed July 7th, 1983, and the denial of the petition for rehearing filed August 4th, 1983.

This appeal is taken under (but not limited) 28 United States Code 1257(2).

Respectfully,

PAUL F. PERATI

Paul F. Perati

**Copies to all proper parties with the Jurisdictional Statement.
Dated: Dec. 29th, 1983**

Copy in appendix of J. Statement has signature.



OFFICIAL SEAL
JOHN H. J. CASHMAN
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
CITY & COUNTY OF SAN FRANCISCO
COMMISSION EXPIRES AUG 4 1984

DECLARATION OF SERVICE

I Sandi Cummings, a U.S. citizen over the age of 21 years, not a party to this action or a witness therein, address 6768 Thornhill Dr., Oakland, California 94611, 415-339-9019, do declare:

That on this 29th day of Dec., 1983, I deposited in the U.S. mail, in the Montclair Oakland, Calif., Post Office, first class postage prepaid the Amended Notice of Appeal Dated Dec. 29th, 1983, with the proper number of copies of the U.S. Supreme Court Jurisdictional Statement, in Perati vs.

Cutter, on the following:

Office of the Clerk, Court of Appeal of The State of Calif., First Appellate District, Div. Four, State Bldg., Civic Center, San Francisco, Calif. 94102.

and
Office of the California State Attorney Gen, State Bldg., Civic Center, S.F., Calif. 94102.

and
Clerk to The Honorable Donald P. McCullum, Law & Motion Judge, Court House, 1225 Fallon St., Oakland, Calif. 94612.

and
Mr. Fred Cutter (Appellee), 5170 Elmwood, Newark, Calif. 94560.

I declare under penalty of perjury that the foregoing is true. Executed in Oakland, Calif., on this 29th day of Dec., 1983.

1 AFFIDAVIT OF SERVICE BY MAIL

2 STATE OF CALIFORNIA)
3 COUNTY OF ALAMEDA) ss

4 I Sandi Cummings being first duly
5 sworn, deposes and states:

6 That on the 29th day of December,
7 1983, I executed the attached Declaration
8 of Service (exhibit F) in Perati vs.
9 Cutter (on appeal to the U.S. Supreme
10 Court), and know that it is true.

11 *Sandi Cummings*
12 Sandi Cummings

13 Subscribed and sworn to before me this
12th day of January, 1984.

14 *John H. J. Cashman*

15 Notary Public, State of
16 Seal



END OF DOCUMENT